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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 622/2017 & CM APPL. 29135/2017 (STAY)
 + ITA 623/2017 & CM APPL. 29137/2017 (STAY)
 + ITA 630/2017 & CM APPL. 29274/2017 (STAY)
 + ITA 631/2017 & CM APPL. 29276/2017 (STAY)
 + ITA 632/2017 & CM APPL. 29278/2017 (STAY)
 + ITA 633/2017 & CM APPL. 29280/2017 (STAY)
 + ITA 658/2017 & CM APPL. 29321/2017 (STAY)
 + ITA 676/2017 & CM APPL. 29472/2017 (STAY)

GE NUOVO PIGNONE S.P.A Appellant
 Through : Mr. Sachit Jolly and Mr. Anirudh
 Bakhru, Advocates.

versus

COMMISSIONER OF INCOME TAX (INTERNATIONAL
 TAXATION), DELHI - I Respondent
 Through : Mr. Ruchir Bhatia, Senior Standing
 Counsel with Mr. Gaurav Khetrapal,
 Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

ORDER
13.09.2017

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1. These appeals are filed by the Assessee under Section 260A of the Income Tax Act 1961 (the 'Act') impugning a common order dated 27th January 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 703/Del/2011, 704/Del/2011, 705/Del/2011, 706/Del/2011, 707/Del/2011, 708/Del/2011, 5741/Del/2010, 5542/Del/2011 for the Assessment Years ('AY') 2001-02 to 2008-09 respectively.



2. Admit.

3. The following question of law is framed for consideration.

“Whether the ITAT overlooked the grounds urged by the Assessee in its appeals regarding installation Permanent Establishment (PE), ad-hoc attribution between sales and services and taxability of income as fees for technical services, and consequently are the appeals before the ITAT liable to be restored to the file of the ITAT for adjudication of the said grounds?”

4. Having heard learned counsel for the parties, the Court is of the view that the above question must be answered in the affirmative since indeed the ITAT failed to address the aforementioned grounds in the Assessee’s appeals before it.

5. Mr. Ruchir Bhatia, the learned Senior Standing Counsel for the Revenue, while not disputing the above position submitted that the Assessee itself had consciously not pressed the above grounds before the ITAT. He referred to the impugned order of the ITAT where there is no mention of such ground being argued.

6. However, the fact that no mention is made of it by the ITAT begs the question whether the ground was given up by the Assessee. That cannot be a matter of inference when the fact remains that specific grounds have been raised in the memo of appeals filed before the ITAT by the Assessee. The only inference that is possible to be drawn is that the ITAT failed to address



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the above grounds urged by the Assessee in the impugned order.

7. It is then submitted by Mr. Bhatia that during the pendency of the appeals before the ITAT, there was an interim order requiring the group companies of the Assessee to make a deposit of 75% of the demand and there was no such conditional stay order as far as the Assessee was concerned. He submitted that the attempt by the Assessee through the present appeals was to avoid meeting the demand that has become enforceable as a result of the dismissal of the Assessee's appeals and seek a continuation of those proceedings so that the interim order may also continue. According to Mr. Bhatia, the Assessee would have an unfair advantage if the appeals were to be restored for the ITAT to deal with the above grounds.

8. The Court finds that the above submission is not factually correct. The interim order dated 15th February 2013 passed by the ITAT covered the appeals filed by the present Appellant-Assessee as well. Further, Mr. Sachit Jolly, learned counsel appearing for the Appellant-Assessee, confirms that, in compliance with the said stay order of the ITAT, the present Appellant-Assessee has, in fact, deposited the requisite amount. He points out that the stay, therefore, continued during the pendency of the appeals before the ITAT.

9. Lastly, Mr. Bhatia contends that the Assessee ought to have filed the application under Section 254 (2) of the Act before the ITAT if, in fact, the grounds relating to the FTS and profits arising from the FTS attributable to the PE were not adjudicated upon. While that was a possible remedy



available to the Assessee, the present appeals cannot be rejected on that ground. The fact remains that the ITAT overlooked the above grounds urged by the Assessee.

10. Consequently, the Court while not setting aside the impugned order of the ITAT in its entirety, sets aside only that portion of the impugned order of the ITAT that disposes of the Assessee's appeals and restores the aforementioned appeals of the Assessee to the file of the ITAT for adjudication of the aforementioned grounds regarding installation Permanent Establishment (PE), ad-hoc attribution between sales and services and taxability of income as fees for technical services. It is made clear that the ITAT is only required to adjudicate the above grounds urged by the Assessee which were not adjudicated upon by it in the impugned order and no other ground.

11. However, after the decision of the ITAT in terms of this order, it would be open to the Assessee, if so warranted, to file appeals before this Court challenging the said order of the ITAT as well as the impugned order of the ITAT challenged in the present appeals insofar as it decides the other grounds against the Assessee.

12. The appeals of the Appellant-Assessee before the ITAT, being ITA Nos. 703/Del/2011, 704/Del/2011, 705/Del/2011, 706/Del/2011, 707/Del/2011, 708/Del/2011, 5741/Del/2010 and 5542/Del/2011, will now be listed before the ITAT on 24th October 2017 for directions. The ITAT will endeavour to pass an order on the above grounds after hearing the parties, within a period



of three months thereafter. Till such time, the interim order dated 15th February 2013, 19th August 2013 and 18th February 2014 of the ITAT as affirmed by this Court by its order dated 8th December 2014 in W.P. (C) No. 6255/2014 shall continue.

13. The question framed is answered in the affirmative. The appeals and pending applications are disposed of in the above terms.

14. *Dasti.*

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S. MURALIDHAR, J.

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PRATHIBA M. SINGH, J.

SEPTEMBER 13, 2017/j